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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,379	01/26/2006	Michael Neumann	2003P01109WOUS	2098

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EXAMINER

GALLEG0, ANDRES F

ART UNIT	PAPER NUMBER
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3637

MAIL DATE	DELIVERY MODE
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07/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/566,379	Applicant(s) NEUMANN, MICHAEL	
	Examiner ANDRES GALLEG0	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 14 and 21 are objected to because of the following informalities:

Claim 14 contains a typographical error and should be rewritten as, "The cooling device according to claim 8..."

Claim 21 contains a typographical error and should be rewritten as, "The cooling device according to claim 15..." Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 10 and 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 10 is not enabling for describing the door compartment (9) as being part of the inner chamber. According to Page 3, Lines 6-7 of the specification, the door compartment is described as being affixed to door (3) as illustrated in Figure 1.

Claim 17 is not enabling for properly describing where a third placement device is to be placed. According to Page 3, Lines 6-7 of the specification, the third placement

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device (door compartment) is described as being affixed to door (3) as illustrated in Figure 1. Appropriate correction is required.

Claims 15, 16, and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Though the applicant has submitted remarks specifying that the ceramic material being claimed is to be non-glass ceramic, the specification has not properly identified this limitation as an existing characteristic of the ceramic material, or what particular kinds of non-ceramic material are in question, and is therefore considered as being non-enabling and improperly claimed new matter and will be interpreted broadly by the examiner. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Melson et al. (US 6113206).

Regarding claim 8, Melson discloses a cooling device (1) comprising an inner chamber (see annotated Figure 1) provided with at least one placement device (see annotated Figure 1), said placement device includes a shelf area (3) made of a ceramic

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material (Figure 1; Column 3 Lines 55-62 and Column 4 Lines 26-30). The placement device in Melson's cooling device is inherently capable of supporting items to be placed thereon such as food, and the examiner takes the position that food is an intended use which is given no patentable weight.

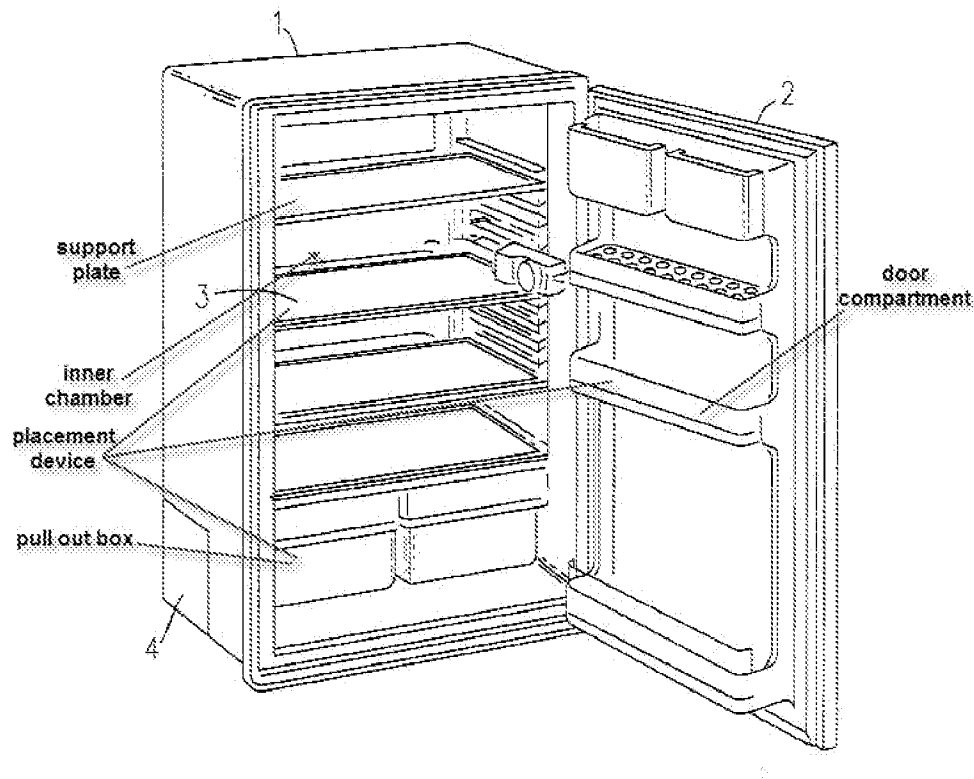


FIG. 1

Melson et al. (US 6113208) - Figure 1

Regarding claim 9, the claim is a product by process claim and the placement device (see annotated Figure 1) does not depend on the process of making it. The product-by-process limitation "fabricated in one piece" would not be expected to impart distinctive structural characteristics to the placement device. Therefore, the claimed

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placement device is not a different and unobvious placement device from Melson. It is noted that Melson's placement device is a one-piece shelf.

Regarding claim 10, Melson discloses the cooling device (1) including said placement device (see annotated Figure 1) constructed as at least one of a support plate (see annotated Figure 1), a door compartment (see annotated Figure 1), or as a pull out box (see annotated Figure 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melson in view of Aitken (US 5179045).

Regarding claim 11, Melson discloses the claimed invention except for a shelf area containing pigments. Aitken teaches a ceramic material containing a pigment as shown in Column 3 Lines 42-46, and Column 4 Lines 10-15, 27-35. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceramic material used to make the shelf area of Melson by providing the ceramic material with a color package, as taught by Aitken, since such a modification, based on user preferences, would allow ceramic material to have color.

Regarding claim 14, Melson discloses the claimed invention except for at least two of said placement devices each differently colored. Aitken teaches differently

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colored ceramic material as shown in Column 3 Lines 10-13, 42-46, and Column 4 Lines 10-15, 27-35. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the placement devices of Melson to have differently colored ceramic material as taught by Aitken, since such a modification would allow for the shelf area to have a more visually appealing display.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melson in view of Tagaki et al. (US 6165590).

Regarding claim 12, Melson discloses the claimed invention except for said ceramic material provided with a glaze. Tagaki teaches a ceramic material provided with a glaze as shown in Column 1 Lines 7-15. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceramic material of Melson by substituting it with a ceramic material capable of receiving a glaze as taught by Tagaki, since such a modification would allow for the shelf area to have a more visually appealing display.

Regarding claim 13, Melson discloses the claimed invention except for at least one set of pigments being added to said glaze. Tagaki teaches at least one set of pigments added to a glaze as shown in Column 1 Lines 25-38. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceramic material of Melson by substituting it with a ceramic material capable of receiving a glaze with pigment added to it as taught by Tagaki, since such a modification would allow for the shelf area to have a more visually appealing display.

Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melson in view of Non-Patent Literature "The Period Arts Fan Company" and in further view of Tagaki.

Regarding claim 15, Melson discloses a cooling device (1) comprising an inner chamber (see annotated Figure 1) provided with at least two placement devices (see annotated Figure 1), a first one of said placement devices formed as a support plate (see annotated Figure 1) including a shelf area (3), and a second one of said placement devices formed as a pull-out box (see annotated Figure 1) (Column 3 Lines 55-62). The placement device in Melson's cooling device is inherently capable of being for items to be placed such as food, and the examiner takes the position that it is an intended use which is given no patentable weight. Examiner takes official notice that it would be obvious to one of ordinary skill in the art to consider the inside bottom surface of a pull-out box to be a shelf area.

Melson does not disclose said support plate, shelf area, and pull-out box shelf area made of a non-glass ceramic material. The Period Arts Fan Co. teaches that refrigerators in the early 1900's contained shelving comprised of porcelain, a type of non-glass ceramic, as shown in Paragraph 1 of the "Cool News" section. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceramic material of Melson by substituting it with a porcelain, non-glass ceramic material as taught by The Period Arts Fan Co., since such a modification would allow for the shelf area to have a more visually appealing display.

Regarding claim 16, the claim is a product by process claim and the two placement device (see annotated Figure 1) do not depend on the process of making it. The product-by-process limitation "fabricated in one piece" would not be expected to impart distinctive structural characteristics to the placement device. Therefore, the claimed placement device is not a different and unobvious placement device from Melson, modified by The Period Arts Fan Co. It is noted that Melson's placement device is a one-piece shelf.

Regarding claim 17, Melson, modified by The Period Arts Fan Co., discloses the cooling device (1) including a third placement device constructed as at least one of a door compartment (see annotated Figure 1).

Regarding claim 18, Melson, modified by The Period Arts Fan Co., discloses the claimed invention except for said shelf areas containing pigments. Tagaki teaches a ceramic material containing a pigment as shown in Column 1 Lines 25-38. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceramic material of Melson, modified by The Period Arts Fan Co., by adding to the ceramic material, a glaze with pigment as taught by Tagaki, since such a modification would allow for the shelf area to have a more visually appealing display.

Regarding claim 19, Melson, modified by The Period Arts Fan Co., discloses the claimed invention except for said non-glass ceramic material provided with a glaze. Tagaki teaches a ceramic material provided with a glaze as shown in Column 1 Lines 7-15. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceramic material of Melson, modified by The Period

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Arts Fan Co., by adding to the ceramic material a glaze as taught by Tagaki, since such a modification would allow for the shelf area to have a more visually appealing display.

Regarding claim 20, Melson, modified by The Period Arts Fan Co., discloses the claimed invention except for at least one set of pigments being added to said glaze. Tagaki teaches at least one set of pigments added to a glaze as shown in Column 1 Lines 25-38. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceramic material of Melson, modified by The Period Arts Fan Co., by adding to the ceramic material, a glaze with pigment as taught by Tagaki, since such a modification would allow for the shelf area to have a more visually appealing display.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Melson in view of The Period Arts Fan Co. and Tagaki et al., and in further view of Aitken

Melson, modified by The Period Arts Fan Co. and Tagaki, discloses the claimed invention except for at least two of said placement devices each differently colored. Aitken teaches differently colored ceramic material as shown in Column 3 Lines 10-13, 42-46, and Column 4 Lines 10-15, 27-35. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the placement devices of Melson, modified by The Period Arts Fan Co. and Tagaki, to have differently colored ceramic material as taught by Aitken, since such a modification would allow for the shelf area to have a more visually appealing display.

Response to Arguments

In response to applicant's argument for claim 8 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that glass ceramic is distinguishable from a ceramic material, and that glass *ceramic* is susceptible to fracture by impact) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's arguments for claim 11 that the Aitken patent does not correct the deficiencies noted with regard to Melson because glass ceramic material is not suited for receiving pigments are not found persuasive. Aitken clearly indicates in Column 4, Lines 27-35 that glass colorants may be added to a glass batch before being crystallized into a glass ceramic state, this particular mixture achieving a burgundy color.

In response to applicant's argument for claim 12 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that glass ceramic has no pores between crystals and thus is not suited for a glaze) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's arguments for claim 15 that the specification supports the amendment to reference a "non-glass" ceramic material is not found persuasive. In no

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part of the specification does the applicant make mention of a glass ceramic or non-glass ceramic material, but instead cites the disadvantages of using plastic, glass, and/or metal in the cited Page 1 Lines 8-14 and 30-34. The language of the claims, supported by the specification, only stated that a ceramic material would be used, and the examiner interpreted this limitation as such.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Eppler et al (US 5783506),—Metcalf et al. (US 4921315), Crandall et al. (US 4168334), Loh et al. (US 7378163), Murnick (US 5595583), Hattori et al (US 7175924), Braun et al. (US 5951134), and Koo (US 2004/0183413).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDRES GALLEG0 whose telephone number is (571)270-7630. The examiner can normally be reached on Monday - Friday, 7:30 AM - 5:00 PM EST (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ANDRES GALLEGO/
Examiner, Art Unit 3637
6/29/09

/Lanna Mai/
Supervisory Patent Examiner, Art Unit 3637